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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,937	02/15/2002	Herbert M. Dean	dean0202con	3941
23580	7590	03/11/2005	EXAMINER	
MESMER & DELEAULT, PLLC 41 BROOK STREET MANCHESTER, NH 03104			HUI, SAN MING R	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,937

Applicant(s)

DEAN ET AL.

Examiner

San-ming Hui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10 and 17-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's response filed December 21, 2004 have been entered. Claims 1-18 are pending. This application contains claims 11-16 are drawn to an invention nonelected with traverse in Paper No. 3. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Warning***

Applicant is advised that should claim 1 be found allowable, claim 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Both claims are drawn to composition comprising the same components.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearle (American Heart Journal, 1990 Sep; 120(3):739-742), Carruthers et al. (American Journal of Cardiology, 1993;71:575-581), Abby et al. (Journal of the American Board of Family Practice, 1998; 11(5):391-398), Oakley et al. (The Journal of Nutrition, 1996;126(3): 751S – 755S), and Behounek et al. (US Patent 5,691,375) in view of Rork et al. (US Patent 5,882,682), references of record.

Pearle teaches that beta-blockers such as timolol, metoprolol, atenolol, and propranolol reducing the overall mortality and the incidence of recurrent myocardial infarction (See the abstract; also page 740, col. 1, second paragraph).

Carruthers et al. teaches atenolol reducing the risk of coronary heart disease (See the abstract).

Abby et al. teaches folic acid and vitamin B<sub>6</sub> are useful in reducing the risk of coronary heart disease such nonfatal myocardial infarction and fatal coronary heart disease (See particularly page 395, Table 2).

Oakley et al. teaches vitamin B<sub>12</sub> supplement is useful with folic acid administration to avoid the folic acid adverse effect: B<sub>12</sub> deficiency (See page 3, third and fourth paragraph).

Behounek et al. teaches HMG-CoA reductase inhibitor such as pravastatin is useful in reduce the risk of cardiovascular event (See the abstract).

The references do not expressly the incorporation of beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, vitamin B<sub>6</sub>, and vitamin B<sub>12</sub> into a single once-a-day dosage unit.

Rork et al. teaches a sustained release system that can include beta-blockers such as timolol, metoprolol, atenolol, and propranolol and statin cholesterol lowering agents such as simvastatin, pravastatin, and lovastatin (See col. 6, line 64-66 and col. 7, line 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, vitamin B<sub>6</sub>, and vitamin B<sub>12</sub> into a single once-a-day dosage unit.

One of ordinary skill in the art would have been motivated to incorporate beta-blockers, such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors, such as pravastatin, folic acid, vitamin B<sub>6</sub>, and vitamin B<sub>12</sub> into a single once-a-day dosage unit. All the agents herein: different beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, and vitamin B<sub>6</sub> are all known to reduce risk of cardiovascular diseases. Possessing the

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teachings of the cited prior art, combining two or more agents which are known to be useful to reduce risk of cardiovascular disease individually into a single sustained release, once-daily composition useful for the very same purpose is prima facie obvious (See *In re Kerkhoven* 205 USPQ 1069), absent evidence to the contrary. Furthermore, possessing the teaching of Oakley et al., one of ordinary skill in the art would incorporate vitamin B<sub>12</sub> into any folic acid containing composition including the instant composition since vitamin B<sub>12</sub> administration would prevent folic acid adverse effect such as vitamin B<sub>12</sub> deficiency.

### ***Response to Arguments***

Applicant's arguments filed December 21, 2004 averring the inappropriate application of *In re Kerkhoven* have been fully considered but they are not persuasive. Applicant further argues that the herein claimed agents have different mechanism of actions, and thus, they are used in different purposes. Examiner notes that the mechanisms of action of the herein claimed agents are not the same as therapeutic purpose. The basis of the rejection set forth in the previous office action is based on the therapeutic purpose, not the mechanism of action, of the herein claimed agents. As discussed in the previous office action mailed July 28, 2004, various agents combined in treating various conditions are usually not having the same mechanism of action. For example, beta-blockers and ACE inhibitors are being used together in treating hypertension and obviously they have different mechanism of action. Antacids and H<sub>2</sub>-blockers for GI; papaverine, and PGE1 for erectile dysfunction; metformin and troglitazone for diabetes; these drugs have different mechanism of action and yet, they

are used to treat the same conditions. In the instant case, different beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, and vitamin B<sub>6</sub> are all known to reduce risk of cardiovascular diseases. Possessing the teachings of the cited prior art, combining two or more agents which are known to be useful to reduce risk of cardiovascular disease individually into a single sustained release, once-daily composition useful for the very same purpose is prima facie obvious (See *In re Kerkhoven* 205 USPQ 1069), absent evidence to the contrary. No such evidence is seen to be present herein.

Applicant's arguments filed December 21, 2004 averring various patents was issued to subject matters that apparently discount the ruling of *Kerkhoven supra* have been considered, but are not found persuasive. Examiner notes that U.S. patent is properties and not legal precedence. Furthermore, it is possible to overcome a rejection based on the ruling of *kerkhoven supra*: unexpected benefits demonstrated by the applicants. In the instant case, no such result or benefit is seen to be present. Therefore, the claims are considered properly rejected under 35 USC 103(a).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

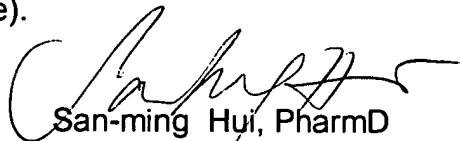
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
San-ming Hui, PharmD  
Primary Examiner  
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